

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2005 Session

IN RE SHON AUSTIN MARR

**Appeal from the Juvenile Court for Williamson County
No. 45935 Lonnie R. Hoover, Judge**

No. M2005-01119-COA-R3-PT - Filed November 16, 2005

WILLIAM B. CAIN, J., concurring.

I adhere to my longstanding view that a “preponderance of the evidence” standard and a “clear and convincing evidence” standard are incompatible with each other and cannot be reconciled either in the trial court or in appellate courts. The effort to make these standards compatible, as asserted in *Ray v. Ray*, 83 S.W.2d 726 (Tenn.Ct.App.2001), and its progeny are in my view incorrect for reasons stated at length in *Estate of Acuff v. O’Linger*, 56 S.W.3d 527 (Tenn.Ct.App.2001) and *In re Z.J.S. and M.J.P.*, No. M2002-02235-COA-R3-JV, filed June 3, 2003 (Tenn.Ct.App.2003-Cain, concurring).

Since the decision of the trial court is supported by clear and convincing evidence, I concur in the judgment.

WILLIAM B. CAIN, JUDGE